

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-808

January 8, 1999

BELL ATLANTIC-MAINE
Notice of Merger With GTE
Corporation

INTERIM ORDER

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

On October 2, 1998, New England Telephone and Telegraph Company D/B/A Bell Atlantic (NET or BA-ME) filed "notification" of an intended merger between its parent, Bell Atlantic Corporation, and GTE Corporation. Bell Atlantic has requested a ruling that the proposed merger does not require Commission approval. We decline to make that ruling at this time.

35-A M.R.S.A. § 707(1)(A) defines a parent corporation as an "affiliated interest" of a public utility. 35-A M.R.S.A. § 708(2) requires Commission approval of a merger or of any other "reorganization" of any affiliated interest of a public utility. Section 708(1)(A) defines a "reorganization" in a variety of ways, but most importantly for this case as either a "merger" or a "change of ownership of control" of an affiliated interest:

"Reorganization" means any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in section 708 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property. The commission may decide what other public utility actions constitute a reorganization to which the provision of this section apply.

(emphasis added).

BA-ME argues that the proposed merger is exempt from the requirement of Commission approval because of a stipulation that we approved in *New England Telephone and Telegraph Company, Investigation of Reasonableness of Rates*, Docket No. 86-224, Order Approving Affiliated Interest Stipulation (July 16, 1993). That Stipulation exempts BA-ME from needing approval for all

reorganizations "except a reorganization resulting in a change of ownership or control of NET" (emphasis added).¹ Thus, while the Stipulation exempted "mergers" from the approval requirement, it did not exempt a "change in ownership or control."

At issue here is whether a merger of an affiliated interest that is the parent of a utility may also constitute a "change of ownership or control" of the public utility. Bell-Atlantic argues that the proposed merger of Bell-Atlantic Corporation does not constitute a change of ownership or a control of the subsidiary utility, NET. In comments filed in this case, Sprint and the Public Advocate have presented arguments to the contrary. We will not decide at this time whether the Stipulation exemption applies.

The substantive objections to the merger raised by Sprint and the Public Advocate relate to the effect of the merger on competition for interexchange retail services, for local retail services and for wholesale (access) services. It has become clear that the Federal Communications Commission (FCC) and the Department of Justice (DOJ) will be reviewing the proposed BA-GTE merger for its potential effect on competition. Any review by this Commission might be redundant. It is possible, or even likely, that we will not need to review these issues, but, as explained below, it is a review we could undertake, if necessary, notwithstanding the possible exemption contained in the existing Stipulation. If the merger fails to gain approval by the DOJ or the FCC, approval by this Commission would not save it. If, on the otherhand, the merger is approved by federal authorities, the findings in those proceedings are likely to provide a sound basis for reaching a conclusion on whether the merger is in the public interest. Any inquiry we would undertake at that point would likely be focused on whether there were Maine specific circumstances warranting rejection or additional conditions.

It is reasonably clear that the focus of the Stipulation was not on competitive issues. The second exception to the general exemption relates to the possible effect on ratepayers of transactions (the provision of goods and services) between a regulated utility and its affiliated interests. The first

¹ One other exception is listed: the creation of an affiliate that is expected to enter an arrangement to provide services or goods to BA-ME or to purchase services or goods from BA-ME. That exception is not directly relevant to the issues in this case.

exception (a change in ownership and control of the utility) could relate to a variety of concerns, but does not necessarily relate to the effect of a merger on competitive providers of telephone service or on the competitive market. Accordingly, as a policy matter, it would be appropriate to review competitive issues, notwithstanding the Stipulation exemption that arguably applies to the proposed BA-GTE merger. Thus, if necessary, we could reopen and reconsider the Order approving the Stipulation pursuant to the provisions of 35-A M.R.S.A. § 1321. We could reassert jurisdiction over "mergers" of parents (and other affiliated interests in the chain of ownership), i.e., except such mergers from the general exemption in the Stipulation. That approach would avoid the need to decide whether a merger of the type proposed here (where the actual parent of the utility remains the same) is within the exemption or the first Stipulation exception.

In its October 3 "Notice", Bell Atlantic apparently requested a ruling by the Commission that the proposed merger is exempt from the approval requirement of section 708(2)(A). We are not willing to make such a ruling at this time. Bell-Atlantic states further "[i]f the Commission concludes, however, that an approval is required, please consider this letter an application for approval." We have not made such a conclusion. Accordingly, we do not consider that the time period for a request for approval under 35-A M.R.S.A. § 708(2) has begun to run.

For the reasons stated above, we will not make the ruling requested by Bell Atlantic. We will continue to monitor proceedings and activities at the Federal Communications Commission and the U.S. Department of Justice.

Dated at Augusta, Maine this 8th day of January, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.